



WASHOE COUNTY

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CM/ACM VS
Finance DJ
DA pal
Risk Mgt DJ
HR N/A
Other N/A

STAFF REPORT

BOARD MEETING DATE: October 14, 2014

DATE: September 23, 2014
TO: Board of County Commissioners
FROM: Dave Solaro, Arch., P.E., Director
Community Services Department, 328-2040, dsolaro@washoecounty.us
THROUGH: Kevin Schiller, Assistant County Manager
SUBJECT: Recommendation to approve an Interlocal Agreement Regarding Administration of Water Financial Assistance Program between Washoe County and the Truckee Meadows Water Authority (TMWA) to establish a process for TMWA to provide funding to Washoe County's Water and Sanitary Sewer Financial Assistance Program that will offer loans to pay the cost for an eligible residential property owner with a failed or failing private water system to connect to TMWA's retail water service facilities and to set forth the terms and provisions regarding the administration and implementation of this program. (All Commission Districts.)

SUMMARY

The purpose of this report is to support the merger of Washoe County Community Services' Water Utility (CSWU) with the Truckee Meadows Water Authority (TMWA) by recommending the Board of County Commissioners (Board) approve an Interlocal Agreement (ILA) with TMWA that establishes the terms and provisions for TMWA to provide funding for use in the County's Water and Sanitary Sewer Financial Assistance Program. This program, operated by the County, will offer loans to residential property owners with failed or failing private water systems to pay for the cost to connect to TMWA's retail water service facilities.

This report is the second report in a series of three recommendations regarding TMWA's participation in the loan program. The first report to the Board includes a recommendation to amend Washoe County Code Chapter 40 covering the Water and Sanitary Sewer Financial Assistance Program to authorize TMWA to participate in the loan program consistent with the terms and conditions of an Interlocal Agreement (ILA). The third report includes a recommendation to amend the County's Water and Sanitary Sewer Financial Assistance Program Policies and Procedures to accommodate TMWA's role in those policies and procedures.

There will be no change to the terms or conditions of the 13 existing loans made under the Water and Sanitary Sewer Financial Assistance Program.

Washoe County Strategic Objective supported by this item: Sustainability of our financial, social and natural resources.

PREVIOUS ACTION

On December 9, 2009, the Board entered into an interlocal agreement with the TMWA Board of Directors governing a proposed merger of CSWU.

On July 27, 2010, the Board approved Ordinance 1449 establishing the Water and Sanitary Sewer Financial Assistance Program and the policies and procedures to administer the program.

On March 19, 2014, The Board and the TMWA Board of Directors held a joint meeting and directed staffs from both entities to complete the merger with an anticipated closing date to occur in December 2014.

BACKGROUND

At the direction of the Board, Washoe County staff has been working on a merger of CSWU with TMWA since 2008. On December 9, 2009, the Board entered into an interlocal agreement with the TMWA Board of Directors governing a proposed merger of the CSWU. From that point forward County and TMWA staffs have been working diligently to complete the merger of the two water utilities.

Staffs from the two entities have been reviewing the Washoe County Code in conjunction with the water utility merger. A small but important element of the CSWU operation is the option for Washoe County, when considered necessary, to offer eligible owners of residential properties with a failed or failing private water system (i.e., a domestic well) a loan to pay for the cost to connect to the public water system operated by CSWU. Washoe County provides those loans through the Water and Sanitary Sewer Financial Assistance Program, the authority of which was permitted by AB 54 (2009 Legislative Session). This legislation allows only a public water or sewer system operated by Washoe County to provide loans to qualified owners of residences to connect to the County's water or sewer systems, which was subsequently enacted in Ordinance 1449 on July 27, 2010, formally establishing the program in Washoe County Code Chapter 40.

Chapter 277 of the Nevada Revised Statutes authorizes public agencies to enter into interlocal and cooperative agreements to perform governmental functions. Staffs from the County and TMWA have drafted an ILA that will establish a mechanism for and set forth certain terms and conditions regarding the administration of the Financial Assistance Program to accommodate the merger of CSWU into TMWA. The ILA includes the following features:

- ✓ TMWA may provide funding, at its discretion, to pay the actual and necessary costs and expenses of a water service conversion in order to: disconnect from a private water system; eliminate, decommission or properly abandon a private water system; and connect to the TMWA public water system.
- ✓ Applications will be submitted to the County who will determine financial eligibility and concurrently the application will be reviewed by TMWA to determine if the customer is eligible to receive residential water service from TMWA and for development of the estimated cost of the conversion.

- ✓ TMWA will advance the estimated cost of the conversion to the County who shall in turn use those funds to pay the actual cost of the conversion. The estimated versus actual cost will be reconciled upon completion of the conversion.
- ✓ A qualified person or company performing the conversion work will do so consistent with TMWA construction requirements in addition to applicable law, rules and regulations.
- ✓ TMWA will review and approve the payments for the actual cost of the conversion, which will be paid by the County from the funds from TMWA.
- ✓ TMWA will review and approve the connection to TMWA's public water system, the construction requirements and perform the final inspection.
- ✓ The County may also provide the loan to connect a residence to the public water system but the connection will be subject to TMWA's: approval of the connection to the public water system; approval of the construction requirements; and the inspection and approval of final construction.
- ✓ Upon completion of the project the County will convert the funding to a loan and prepare the necessary loan documents, with the loan being jointly payable to the County and TMWA and TMWA will be named as an additional beneficiary on any deed of trust or pledged instrument.
- ✓ Funding from TMWA will be secured by real property and include the County's ability to collect loan payment delinquencies on the property tax roll.
- ✓ Principal and interest payments received by the County will be forwarded to TMWA and the County will retain a 1% fee added to the loan for administrative expenses.

FISCAL IMPACT

The County's cost to administer the loans funded by TMWA will be offset by a 1% loan administrative fee paid by the owners of residences participating in the program that will be retained by the County.

RECOMMENDATION

It is recommended that the Board of County Commissioners to approve an Interlocal Agreement Regarding Administration of Water Financial Assistance Program between Washoe County and the Truckee Meadows Water Authority (TMWA) to establish a process for TMWA to provide funding to Washoe County's Water and Sanitary Sewer Financial Assistance Program that will offer loans to pay the cost for an eligible residential property owner with a failed or failing private water system to connect to TMWA's retail water service facilities and to set forth the terms and provisions regarding the administration and implementation of this program.

POSSIBLE MOTION

Should the Board agree with staff's recommendations, a possible motion would be: "Move to to approve an Interlocal Agreement Regarding Administration of Water Financial Assistance Program between Washoe County and the Truckee Meadows Water Authority (TMWA) to establish a process for TMWA to provide funding to Washoe County's Water and Sanitary Sewer Financial Assistance Program that will offer loans to pay the cost for an eligible residential property owner with a failed or failing private water system to connect to TMWA's retail water service facilities and to set forth the terms and provisions regarding the administration and implementation of this program.

INTERLOCAL AGREEMENT REGARDING
ADMINISTRATION OF WATER FINANCIAL ASSISTANCE PROGRAM

This Agreement is dated for identification purposes as of the 31st day of December, 2014, notwithstanding the date of the last-executed signature below, by and between Washoe County, a political subdivision of the State of Nevada (hereinafter "County") and the Truckee Meadows Water Authority, a Joint Powers Authority created pursuant to NRS Chapter 277 among Reno, Sparks and Washoe County, Nevada (hereinafter "TMWA").

RECITALS

WHEREAS, Washoe County and the Truckee Meadows Water Authority are public agencies authorized by chapter 277 of the Nevada Revised Statutes to enter into interlocal and cooperative agreements with each other for the performance of governmental functions;

WHEREAS, on July 27, 2010, the County adopted Ordinance No. 1449 pursuant to NRS 244.3651 and 244.3653, which established a Water and Sanitary Sewer Financial Assistance Program, as codified in Washoe County Code Sections 40.335 through 40.348 (referred to as "WCC"), for the purpose of making financial assistance available in the form of loans to pay the actual and necessary costs and expenses to disconnect from a Private Water System and connect to a Public Water or Sewer System, as set forth in that ordinance (the "Financial Assistance Program").

WHEREAS, the Financial Assistance Program was initially limited to connections into the Washoe County Public Water or Sewer Systems.

WHEREAS, TMWA operates a Public Water System as that term is defined in NRS 244.3651 and is eligible under state law to cooperate with Washoe County in the Financial Assistance Program.

WHEREAS, on or about January 29, 2010, the County and TMWA entered into that certain Interlocal Agreement Governing the Merger of the Washoe County Department of Water Resources Water Utility Into the Truckee Meadows Water Authority ("Merger Agreement") pursuant to which the parties agreed to merge the Washoe County water utility into TMWA.

WHEREAS, the County and TMWA desire to modify the Financial Assistance Program to make it available for eligible residential property owners seeking to connect into the TMWA Public Water System, and the County has or will amend Ordinance No. 1449 to provide such modification.

WHEREAS, the parties desire to establish a mechanism for and set forth certain terms and provisions regarding: i) TMWA providing funding for use in the Financial Assistance Program and connections into the TMWA Public Water System; ii) TMWA determining and administering eligibility of water system applicants to participate in the Financial Assistance Program where funding is provided by TMWA; and iii) County

administering Loans made to facilitate connection into the TMWA Public Water System on the terms and conditions stated herein.

NOW THEREFORE, it is agreed as follows:

1. TMWA Program Funding Assistance. TMWA may, in its sole discretion, but shall have no obligation to, elect from time to time to provide funding to the County Water Resources Fund to be used exclusively for providing financial assistance to eligible TMWA Customers in the form of Program Loans through the Financial Assistance Program to pay actual and necessary costs and expenses to: (a) disconnect from a Private Water System; (b) eliminate, decommission or properly abandon a Private Water System; and (c) connect to the TMWA Public Water System. Any funding provided by TMWA to the County under this Section 1 (referred to as "TMWA Funding") shall be in such amount(s) as TMWA determines in its sole discretion. TMWA Funding shall be used exclusively for Program Loans by the County to TMWA Customers for Authorized Expenditures (referred to as "Program Loans") to connect to the TMWA Public Water System, and only as otherwise permitted in this Agreement. As used herein, the term "TMWA Customers" shall mean residential property owners who desire to abandon their Private Water System and connect to the TMWA Public Water System, and whom TMWA has agreed are eligible to receive residential water service from TMWA.

2. Delegation of Administrator Authority. Where a Program Loan is made from TMWA Funding, the authority to make certain reviews or approvals required under the Financial Assistance Program as described below is hereby delegated to and shall be exercised by the TMWA General Manager or designee and no separate approvals shall be required of the Administrator, as defined in WCC 40.339(2), with respect to the following:

2.1 Service Property Application and Eligibility. Applicants requesting a Program Loan to connect into the TMWA Public Water System shall be required to submit an application to the County. With respect to eligibility of a service property to connect into a TMWA Public Water System, and water system facility construction and well abandonment reviews required under the Program, where a Program Loan is made from TMWA Funding, all such matters shall be within the discretion of the TMWA General Manager or designee to review and approve and no separate approvals shall be required of the Administrator. Applicants must receive approval of TMWA under this section and of County under WCC 40.343 to be eligible for a Program Loan. Upon approval of the Loan application, TMWA will deposit TMWA Funding with the County based on the estimated cost of the Program Loan. The final amount of TMWA Funding will be reconciled at the time the Program Loan is finalized.

2.2 Authorized Expenditures. With respect to the approvals required under WCC 40.344, where a Program Loan is made from TMWA Funding all Authorized Expenditures must be verified by invoices or receipts to the reasonable satisfaction of the TMWA General Manager or designee and no separate approvals shall be required of the Administrator.

2.3 Construction Requirements. Where a Program Loan is made from TMWA Funding, the County shall require the TMWA Customer, Contractor or other qualified person performing the work or services authorized under the Financial Assistance Program to perform such work consistent with TMWA construction requirements in addition to applicable law, rules and regulations. Additionally, the County shall not issue a notice to proceed as contemplated by WCC 40.345 (3) unless the TMWA General Manager or designee consents to such notice.

2.4. Construction, Inspections, Permits and Tests. Where a Program Loan is made from TMWA Funding, all approvals required under WCC 40.345(5) shall be within the discretion of the TMWA General Manager or designee, and County shall require Program participants to provide written documentation that TMWA has inspected and approved final construction.

2.5 Loan Commitments to TMWA Customers. Where a Program Loan is made from TMWA Funding, all determinations with respect to an applicant's satisfaction of eligibility requirements in the Financial Assistance Program (except for an applicant's financial eligibility, which will be determined by the County) shall be within the discretion of the TMWA General Manager or designee, and County shall require applicants to provide written documentation of a finding by the TMWA General Manager or designee that the purpose of the Loan and the terms and conditions of repayment satisfy the goals and eligibility requirements set forth in the Financial Assistance Program. No TMWA Funding shall be disbursed or made available by the County to any person unless: 1) the applicant is a TMWA Customer; 2) TMWA has approved the application from the TMWA Customer to participate in the Financial Assistance Program and the County has received written approval from the TMWA General Manager or designee of such approval; and 3) County has approved the applicant's financial eligibility.

2.6 Loan Disbursements. Where a Program Loan is made from TMWA Funding, all determinations with respect to disbursements required under WCC 40.346(3), shall be within the discretion of the TMWA General Manager or designee, and the County shall require written documentation that TMWA has determined the invoices and amounts qualify as Authorized Expenditures and all abandonment and conversion work have been performed and completed satisfactorily to TMWA standards. The County will refund to TMWA the amount that total actual expenses are under the total estimated expenses funded by TMWA or TMWA will pay to the County an amount sufficient to pay current approved invoices when the actual expenses are over the estimated expenses funded by TMWA.

3. Loan Documents and Repayment of Program Loans. Where a Program Loan is made from TMWA Funding, the promissory note, deed of trust and other loan documents prepared in connection with the Program Loan shall be jointly payable to TMWA and the County and shall name TMWA as an additional beneficiary of any deed

of trust or other pledge instrument. The County agrees it is the intention of the parties that all repayments of Loans made from TMWA Funding shall be paid to TMWA. Interest rates charged on Loans under WCC 40.346(4) shall be consented to by TMWA.

4. Loan Administration. Where a Program Loan is made from TMWA Funding, the County shall be responsible for administering the Loan, including administering the disbursement of Loan proceeds, loan documentation, and collection and repayment of the Loan. For and in consideration of its administration of the program, the County shall be entitled to collect and retain any Loan Administrative Fee collected from TMWA Customers under the Financial Assistance Program.

5. Repayment of Loans and Interest Charges. Where a Program Loan is made from TMWA Funding, any repayment of Program Loans and related interest charge to the County (excluding the Loan Administrative Fee) under WCC 40.347 and WCC 40.348 shall be paid by the County to TMWA within fourteen (14) business days of receipt.

6. Other Funding Sources. Nothing in this Agreement shall be construed to prevent or limit the County from providing financial assistance to a TMWA Customer or any other person under the Financial Assistance Program from funding sources other than TMWA Funding, provided TMWA's approvals under sections 2.1, 2.3 and 2.4 of this agreement are obtained.

7. Entire Understanding of the Parties. This Agreement contains all the obligations and agreements of the parties with respect to the administration of the Financial Assistance Program where a Program Loan is made from TMWA Funding, and oral or written obligations not contained herein shall have no force or effect to alter any term or condition of this Agreement, unless modified in accordance with Paragraph 8.

8. Amendment. This Agreement may be amended or modified only by the mutual written agreement of the County and TMWA and ratification by their respective governing boards.

9. Ratification By Governing Boards. This Agreement is contingent upon ratification by official action of the governing body of the parties hereto, and shall be effective on the closing date of the Merger.

10. Severability. If any provision of this Agreement is held illegal or unenforceable in a judicial proceeding, such provision shall be severed and shall be inoperative, and, provided that the fundamental terms and conditions of this Agreement (including, without limitation, Section 1 remain legal and enforceable, the remainder of this Agreement shall remain operative and binding on the Parties.

11. Waiver. A waiver of any breach of any provision of this Agreement by any party shall not be construed to be a waiver of any preceding or succeeding breach.

12. Governing Law. This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of Nevada.

13. Indemnification

13.1 Each Party agrees to be responsible for any liability or loss that may be incurred as a result of any claim, demand, cost, or judgment made against that Party arising from any negligent act or negligent failure to act by any of that Party's employees, agents in connection with the performance of obligations assumed pursuant to this Agreement.

13.2 Each Party further agrees, to the extent allowed by law pursuant to Chapter 41 of the Nevada Revised Statutes ("NRS"), to hold harmless, indemnify and defend the other from all losses, liabilities or expenses of any nature to the person or property of another, to which the indemnified party may be subjected as a result of any claim, demand, action or cause of action rising out of the negligent acts, errors or omissions on the part of employees or agents of the indemnifying party in relation to this Agreement.

IN WITNESS WHEREOF, the Parties have set their hands with the intent to be bound.

TRUCKEE MEADOWS WATER
AUTHORITY, a Joint Powers Authority
created pursuant to NRS Chapter 277,

Dated _____, 2014

By: _____

Dated _____, 2014

WASHOE COUNTY BOARD OF
COMMISSIONERS

By: _____
David Humke, Chairman

ATTEST:

Washoe County Clerk